

Mariah Lopez, Pro Se Litigant

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SDNY PRO SE OFFICE

2019 MAR 29 PM 3:56

March 29th 2019

Hon Ona T Wang

United States Magistrate Judge

Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312
Court Rm 20D

Re: Case Num 17 CV 3014
Case Num 19 CV 2582

Status Letter from Plaintiff to the Court; Request for the Court to lift Stay on Discovery, updating the Court to several recent relevant events. The filing of 19 CV 2582, SDNY

Dear Magistrate Wang,

Plaintiff is submitting this letter to update the Court concerning recent events relating to parties in the case, as well as to ask the Court to lift its Stay of Discovery proceedings (issued on 2/6/19), and to direct parties to resume Discovery, even as all parties and the Court wait for the clerk to identify potential Pro bono counsel for the Plaintiff for the limited purposes of settlement.

This morning I met with Attorney David M. White Director of the Conflict Management Program, and based on this interaction Plaintiff has declined the program's assistance.

Relating to Discovery, Plaintiff now has access to the cell phone with material needed to engage in Discovery and prepare for trial in this case. This Court's ruling to appoint Pro bono counsel for settlement talks, does not stay the case in general; and Plaintiff is unaware of the Clerk will continue looking for Counsel for the Plaintiff. Even so, the choice to accept assistance, is ultimately the Plaintiffs.

The clerk potentially finding counsel for the Plaintiff, as well as the Plaintiff accepting said counsel's advice or representation, are not guaranteed.

However, Plaintiff rights of Due Process and Discovery, are guaranteed, as per the Constitution and Federal law.

There is no reason that Discovery shouldn't continue. Lifting the Stay would be the interest of justice, and, save time and resources on all sides, either within the context of settling the case or, in bringing it to a full trial posture.

Either way all sides need to have access to said Discovery material to aid settlement talks (if a settlement remains viable). Once all the "ingredients" are on the table, a fair settlement should be easy to reach. All of the "ingredients" are not on the table yet, so to speak.

The Defendants in this case are the government, and there is a level of public-transparency to be gained by this Court furthering and supervising Discovery, in addition to the procedural necessity. This transparency --especially relating to allegations of mistreatment of vulnerable homeless individuals-- would benefit the public good. The Defendants (the government) should not be able to keep their dirty laundry private within the context of settlement talks, or, because of a court issued Stay on Discovery. Plaintiff reminds the Court, respectfully, that said Stay was issued after, and linked to, a highly irregular arrest of the Plaintiff and subsequent confiscation of a device, central to these proceedings.

Mr Roberts and the Law Department seem to be benefiting from the recent Stay, in unintended ways; justifiably withholding, or sitting on information relevant to this case and its core allegations, including wrongdoing by DHS staff or its subcontractors. Plaintiff believes the Defendants are seeking to keep this information out of the Plaintiffs hands, or even from public view. Plaintiff personally knows of several ex staffers who have reached out to Mr Roberts regarding their willingness to testify to the fact that I was targeted by staff and administration at Marsha's; and that there indeed was a "plot" to have me transferred, unrelated to Plaintiff's so called behavior.

Specifically, in recent weeks Mr Roberts was contacted by a former staff member from Marsha's named Troy Miller, who made it clear to Mr Roberts during this call that he was directed to target Plaintiff for rule breaking and other infractions, in a manner inconsistent with how rules were enforced when it came to other clients. Mr Miller said that he and other staff at Marsha's were instructed to single out Plaintiff by Project Renewal and QPS administrative staff; this 'targeting' morphed into retaliation, once Plaintiff filed the original ADA related case in front of Judge Caproni. After winning the TRO, AND the Stay in NYS Supreme Court (blocking a transfer to WIN West), the "targeting" got worse.

This staff member, Mr Miller making contact with Mr Roberts, should have been a game changer in this case.

The likelihood that Plaintiff will succeed on most claims on the merits is getting stronger by the day. Therefor, the Municipal Defendants should stop resisting Plaintiff's settlement demands.

Regardless, there is a vast amount of material to be requested and reviewed by all parties, and since Plaintiff is Pro se, it would make sense to resume the Court supervised exchange of material within Discovery, sooner than later and to suss out any challenges by parties.

Plaintiff would also like to bring to the Court's attention a case relevant to this one, unfolding almost in real-time.

Approximately one month ago Plaintiff was contacted by a Trans woman who was mentioned in previous proceedings relating to this case, yet not heard from by this court; a Trans woman who previously lived at WIN West, named Akasha Barker. Ms Barker was (in her words) "brainwashed", "forced out" (of WIN), and "pressured" by DHS and WIN combined to take accept a transfer from WIN, to an inappropriate placement under the supervision of the Municipal Defendants (HRA, not DHS). This occurred in mid 2017.

Within the last month or so Ms Barker contacted Plaintiff stating that the placement which WIN rushed her to accept is/was dangerous, and that she is/was in fear for her safety. The placement Ms Barker was in made no sense to the Plaintiff; a shared space with a Gay man?

Plaintiff believes the Defendants orchestrated said transfer (from WIN, in 2017) so they (Mr Roberts) can assert in this case, that they--WIN and the Municipal Defendants-- have successfully housed multiple 'Trans women'. The Defendants have indeed made such arguments in defending this case.

Back to Ms Barker: For reasons still unclear, in 2017 this Trans woman was placed at a 'Supportive Housing' placement, with her roommate being a Gay male individual.

The tension between this Trans woman and her roommate recently reached the point of physical abuse and harassment; of Ms Barker by this roommate.

This is what caused this Trans woman to reach out to me recently; she was willing to be homeless in order to get away from her roommate. So, Plaintiff activated an emergency protocol under the auspices of Plaintiff's non profit, STARR, and Plaintiff's staff engaged with Ms Barker, getting appropriate releases signed, and reaching out to the City on her behalf.

Plaintiff also contacted Mr Roberts, making him aware of her situation and her needs.

Next, Plaintiff asked attorney Carmen Giordano to step in and help with the Ms Barker's case. He agreed and sent a Notice to Cure to the City and/or it's agents based on his conversation with Ms Barker. He soon left for a pre-scheduled vacation and, the Defendants took no steps to provide Ms Barker with appropriate housing, causing her to become homeless.

Defendants are still refusing to find a more suitable placement for this Ms Barker (who has unique medical needs, just like Plaintiff in this case).

She cannot go to Marsha's because of DHS's arbitrary age limit of 30 years if age for entry into Marsha's.

This Trans woman is desperate, fears for her safety and her health (since she is unable to fully adhere to medical regimens (taking her heart medication, and adhering to her post op dilation responsibilities.

Ms Barker is in no way to blame for the situation in which she finds herself. By her own words, Ms Barker was afraid to speak out against WIN in 2017, lest she remain at WIN, and not get her "own place", an apartment placement outside of the shelter. She reports being threatened with a transfer to an even worse placement, if she refused to accept the transfer. It is apparent to Ms Barker now, that she was played by WIN administrators, who wanted to keep Ms Barker and Plaintiff in this case, apart.

Ms Barker is currently facing near identical set of circumstances to Plaintiff: she is homeless and forced to turn to survival sex work to house herself; considers herself Transgender; has multiple documented medical/mental health reasons which require her to be housed in a private room while at a shelter run by the Defendants.

Ms Barker asserts that placement for her, as a post op Trans individual, inhibits access to and compliance with medical treatment, and limits her free expression as a Trans individual. Just like Plaintiff in this matter, Ms Barker reports having to 'play' and act Cisgender... having to hide her Trans identity, in order to avoid harassment while in Cisgender, gender segregated settings. Plaintiff joins Ms Barker in asserting that DHD failures violate the ADA (both Ms Barker and Plaintiff have PTSD, which is aggravated by a dorm placement), as well as rights afforded to her under the 1st and 14th Amendment, as well as 'new' rights under the recently enacted GENDA.

Mr Roberts and Ms Grant are aware of the woman's situation and allegations.

Now that Ms Barker is also homeless, Trans; Post Op, and requires the accommodation of a single room occupancy, perhaps Class Certification would be appropriate.

Ms Barker has filed a civil case in the SDNY, 19 CV 2582, due to the actions and failures of the Defendants.

In addition to her complaint Plaintiff Ms Barker has filed a request TRO, and at a conference for said TRO, the Court seemed to be entertaining the idea of granting the Plaintiff some form of relief; possibly a TRO requiring a single room.

Mr Roberts, when asked by the Court in Ms Barker's case, admitted that both lawsuits, and the claims within are virtually identical.

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The City needs to engage more heartily, in settlement negotiations. The Law Department's stubbornness is akin to that of lawyers defending segregation or oppressing Queer Youth in foster care; both scenarios are real and recent. Both are examples of lawyers for the government, standing on the wrong side of history and civil rights.

Everything is pointing to a settlement being ideal.

The person (Troy Miller's) phone call and potential testimony creates considerable liability for the Municipal Defendants, as his statements and testimony support Plaintiffs entire case and allegations. Also, Ms Barker's lawsuit creates an interesting conundrum for the Court's and the Defendants.

Given that Plaintiff and Seton Hall attorneys won't be working together towards settlement Plaintiff need to continue preparing for trial, settlement, or a potential appeal to the Second Circuit, if this Court's does not rule soon on Plaintiff's request for a TRO, from December!

Plaintiff also requests that the Court address the Municipal Defendant's refusal to negotiate, with Plaintiff, in good faith.

To Plaintiff's knowledge, there is no Federal or State law that allows Mr Roberts and the City of New York to cease good faith negotiations with, simply because the Plaintiff is Pro SE and, because the court has saw a benefit in potentially appointing counsel.

This is not a criminal case, the Defendants need to engage in settlement talks and the longer the City takes to house the Plaintiff or settle, the larger to amount that the Plaintiff is seeking will become. This is simple math, basic law, and common sense.

Likewise, the longer Discovery takes, the longer any trial or settlement talks will take to complete, or bare fruit.

Mr Roberts and his clients should not be allowed to force the taxpayers to foot the bill for extended, unfounded stubbornness and delayed Discovery due to the City Law Department's poor decisions and lack of strategy.

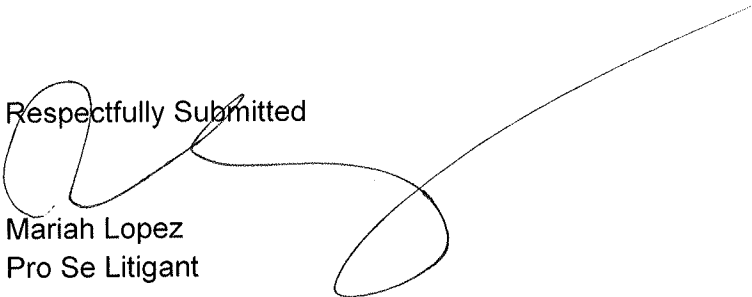
Mr Roberts has still NOT responded with a number amount as to the monetary settlement demands made by the Plaintiff, going on five months.

Sadly, the situation unfolding with Ms Barker also points to the needs for good-faith settlement talks; policy reform within DHS, and a pattern of practice on the part of the City. Ms Barker's case also increases the likelihood that Plaintiff would prove successful on the merits of the case, if the case were to go to trial.

Plaintiff appreciates the Court's time and attention in this matter.

Respectfully Submitted

Mariah Lopez
Pro Se Litigant

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a long, sweeping horizontal line that curves upwards at the end.



GIORDANO LAW OFFICES PLLC

March 5, 2019

VIA EMAIL

McAlpin, Yvonne
ymcalpin@svwsjmc.org

NOTICE TO CURE

Re: Akasha Barker

Dear Ms. McAlpin:

My office has been retained by Ms. Barker regarding the ongoing problems and damages she has endured since being placed in your living facility. First and foremost, your facility managers have mistakenly, and rather outrageously, housed a biological male with Ms. Barker, a transgender female. As a result, Ms. Barker has been subjected to ongoing sexual harassment, threats of violence, and unwanted advances. Additionally, Ms. Barker has enumerated several problems, including loss and destruction of her personal property, due to lack of security in your facility. Unless these problems are addressed immediately, we will consider all appropriate courses of action, including litigation. Kindly contact our office to discuss further. If we do not hear from you, we will proceed accordingly.

GIORDANO LAW OFFICES, PLLC

By: Carmen Jack Giordano

cc. Akasha Barker, enlightendpossibilities@gmail.com

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2019 MAR 29 PM 4:54
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Fill in above the full name of each plaintiff or petitioner.

Akasha Barker

Case No. _____ CV _____

-against-
New York City, Dept Homeless
Services, HRA

Fill in above the full name of each defendant or
respondent.

Motion for Emergency TRO
DECLARATION

Briefly explain above the purpose of the declaration, for example, "in Opposition to Defendant's Motion for Summary Judgment."

I, Akasha Barker, declare under penalty of perjury that the
following facts are true and correct:

In the space below, describe any facts that are relevant to the motion or that respond to a court order. You may also refer to and attach any relevant documents.

I am currently being forced to turn to
prostitution, plus am street homeless, because
DHS is refusing to provide me with housing
consistent w/ my needs. I believe
DHS is also refusing to house me in AB

a single room because it would be inconsistent w/ its position in the case "Lopez v NYC DHS (et al, CV 3014).

~~AB~~ AB. NYC DHS refusing to place me according to my needs, could kill me.

I also suffer from congestive heart failure and being stressed (PTSD, anxiety, physical exhaustion from being homeless) is increasing my risk of massive heart attack and death.

My first heart attack was 4/15 and received at Jamaica Hospital. ~~to last heart~~ AB In June 2016 I suffered a second heart attack and was saved at Mount Sinai. I have not been street homeless since early 2017 and I am afraid that this time, homelessness is going to kill me.

* I also believe that being homeless and unable to dilate my neo vaging, could result in it closing.

Attach additional pages and documents if necessary.

Executed on (date)

Akasha Barker

Name

Street Homeless

Address

917496 6312

Telephone Number (if available)

Signature

Prison Identification # (if incarcerated)

City

State

Zip Code

E-mail Address (if available)

enlightendpossibilities@gmail.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

Alasha Tonia Barker

-against-

The City of New York, DHS, HRA

____ CV ____
(Include case number if one has been assigned)

COMPLAINT

Do you want a jury trial?

☒ Yes ☐ No

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

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I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

☒ Federal Question

☐ Diversity of Citizenship

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

The Americans w/ Disabilities Act, and the 1st and 14th Amendments of the US Constitution, as well as the Fair Housing Act and multiple other Federal laws and statutes relating to people w/ disabilities

B. If you checked Diversity of Citizenship

1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, AKasha Basker, is a citizen of the State of
(Plaintiff's name)

New York
(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, City of New York, DHS, HRA, is a citizen of the State of
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of _____

If the defendant is a corporation:

The defendant, _____, is incorporated under the laws of the State of _____

and has its principal place of business in the State of _____

or is incorporated under the laws of (foreign state) _____

and has its principal place of business in _____

If more than one defendant is named in the complaint, attach additional pages providing information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

<u>AKASHA</u>		<u>Barker</u>
First Name	Middle Initial	Last Name
<u>Street Homeless</u>		
Street Address		
<u>New York</u>	<u>NY</u>	
County, City	State	Zip Code
<u>917 496 6312</u>	<u>enlightendpossibilities@gmail.com</u>	
Telephone Number	Email Address (if available)	

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

The City of New York
 First Name Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

Defendant 2:

NYC Department of Homeless Services
 First Name Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

Defendant 3:

NYC Human Resources Administration
 First Name Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

Defendant 4:

First Name

Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

III. STATEMENT OF CLAIMPlace(s) of occurrence: New York CityDate(s) of occurrence: May /17 - present**FACTS:**

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

I am a Transgender woman w/ many medical conditions which require privacy — so that I may be in compliance w/ my obligations as a Transgender patient.

My conditions include PTSD and anxiety. Ever since I entered the DHS Shelter System, they deprived me the privacy — in a single room — and ~~no~~ individual sleeping space needed to reduce my medical symptoms and promote overall health. My conditions technically make me disabled under the ADA — Trans related "PTSD"

and Anxiety. While at WIN West Woman's Shelter I asked for a single room for my Trans related disabilities and needs, WIN Staff refused. I experienced mistreatment and deprivation of my rights while at WIN. Eventually I was transferred when I complained about conditions I have been being abused at the "New" placement for almost two years. In the last several weeks DHS has been made aware that I am now homeless again, and need a placement. My Doctor has ordered a single room "mistreatment" and DHS is refusing. So INJURIES: I am homeless — and don't feel safe at a "woman's shelter."

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

Physical abuse ("New Placement post WIN West")
 Psychological abuse (Staff at WIN; individuals at New Placement post WIN); ~~to SCAB~~ Being forced to prostitute to earn money to pay for safe medically appropriate housing to avoid "the streets." I stay in hotels and must sell my body to afford the rooms.

IV. RELIEF

State briefly what money damages or other relief you want the court to order.

Monetary Damages; an order compelling DHS to house me according to my medical needs and providers recommendations

V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

March 21, 2019
Dated

[Signature]
Plaintiff's Signature

Akasha
First Name

Tonia
Middle Initial

Barker
Last Name

Street Homeless
Street Address

County, City

917 496 6312

Telephone Number

State

Zip Code

enlightendpossibilities@gmail.com
Email Address (if available)

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.

CONSENT TO ELECTRONIC SERVICE

I hereby consent to receive electronic service of notices and documents in my case(s) listed below. I affirm that:

1. I have regular access to my e-mail account and to the internet and will check regularly for Notices of Electronic Filing;
2. I have established a PACER account;
3. I understand that electronic service is service under Rule 5 of the Federal Rules of Civil Procedure and Rule 5.2 of the Local Civil Rules, and that I will no longer receive paper copies of case filings, including motions, decisions, orders, and other documents;
4. I will promptly notify the Court if there is any change in my personal data, such as name, address, or e-mail address, or if I wish to cancel this consent to electronic service;
5. I understand that I must regularly review the docket sheet of my case so that I do not miss a filing; and
6. I understand that this consent applies only to the cases listed below and that if I file additional cases in which I would like to receive electronic service of notices of documents, I must file consent forms for those cases.

Civil case(s) filed in the Southern District of New York:

Note: This consent will apply to all cases that you have filed in this court, so please list all of your pending and terminated cases. For each case, include the case name and docket number (for example, John Doe v. New City, 10-CV-01234).

BARTNER, AKASHA, Tonia
 Name (Last, First, MI)

Street Homeless
 Address City State Zip Code

917 496 6312
 Telephone Number

Enlightend possibilities@gmail.com
 E-mail Address

March 21, 2019
 Date

[Signature]
 Signature

Return completed form to:

Pro Se Intake Unit (Room 200)
 500 Pearl Street
 New York, NY 10007

J3R5barC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 AKASHA TANIA BARKER,

4 Plaintiff,

New York, N.Y.

5 v.

19 Civ. 2582 (JGK)

6 THE CITY OF NEW YORK,

7 Defendant.

8 -----x

9 March 27, 2019
3:15 p.m.

10 Before:

11 HON. JOHN G. KOELTL,

12 District Judge

13 APPEARANCES

14 AKASHA TANIA BARKER, Pro Se

15 ZACHARY W. CARTER

Corporation Counsel for the City of New York

16 BY: JONATHAN PINES

17 BY: THOMAS ROBERTS

18 Assistant Corporation Counsel

J3R5barC

conference

(Case called)

THE DEPUTY CLERK: All parties please state who they are for the record, starting with counsel via phone.

MR. PINES: This is Jonathan Pines, New York City Law Department for the defendant DHS.

MS. BARKER: My name is Akasha Barker.

THE COURT: The reason that I scheduled the matter is because I have the plaintiff's application for an emergency TRO which asks for an accommodation in City public housing, as I understand it, and when I have an application for a TRO my regular practice is to call the parties in and to hear them and usually to set up a schedule for the submission of papers unless what I have on the TRO is sufficient for me to decide one way or another whether to grant a TRO.

So, when I have a pro se litigant I give the pro se litigant the opportunity to speak first or second because the defendant is usually represented by a lawyer. So, Ms. Barker, you can speak first or you can speak second; as you wish.

MS. BARKER: Is it possible that I could have Mariah Lopez sit with me?

THE COURT: Possible for you to have what?

MS. BARKER: Mariah --

THE COURT: You have so speak into the microphone.

MS. BARKER: Mariah Lopez sit with me.

THE COURT: Sure.

J3R5barC

conference

1 MS. BARKER: She is not an attorney.

2 THE COURT: She's what?

3 MS. BARKER: She is not an attorney or a lawyer but
4 she also has a pro se case, as well, and she has experience.

5 THE COURT: Oh, yes. You refer to her case in your
6 papers?

7 MS. BARKER: Yes.

8 THE COURT: She can sit with you.

9 MR. PINES: Your Honor?

10 THE COURT: Yes.

11 MR. PINES: This is Jonathan Pines. Could you just
12 indulge me for literally 15 seconds because there is an
13 attorney who is far more expert in this than I am who I think I
14 could patch in on this call.

15 THE COURT: Absolutely.

16 MR. PINES: I'm sorry?

17 THE COURT: I said absolutely, yes.

18 MR. PINES: Good. Thank you so much. Let me see if I
19 can conference him right now. Thank you.

20 THE COURT: Sure.

21 (pause)

22 MR. PINES: Hello?

23 THE COURT: Yes.

24 MR. PINES: I wasn't able to patch him in on the phone
25 and I don't want to take your time while I run down the hall,

J3R5barC

conference

1 so.

2 THE COURT: No, hold on. You can run down the hall.

3 MR. PINES: Thank you, then. Give me a half second.

4 Thank you.

5 THE COURT: Sure.

6 (pause)

7 MR. PINES: Your Honor?

8 THE COURT: Yes; Hi, Mr. Pines.

9 MR. PINES: Thank you, I have Tom Roberts here as well
10 which is I think someone somewhat familiar with the issues.

11 THE COURT: Okay. So, Ms. Barker, do you want to
12 begin or do you want the defendant to begin?

13 MS. BARKER: Let defendant begin, please.

14 THE COURT: Okay.

15 So, Mr. Pines or Mr. Parks, the plaintiff is seeking a
16 TRO, the gist of which is, as I understand it, asking for a
17 single room in city housing because the failure to provide a
18 single room is alleged to be in violation of the Americans with
19 Disabilities Act because of the plaintiff's medical conditions.

20 So, the immediate question is what is the City's
21 position on this? I mean, I can ask for quick briefing. I can
22 also refer the plaintiff to the Legal Assistance Group across
23 the street which provides legal assistance to litigants in the
24 Court who are pro se. The other thing that jumps out from a
25 case such as this is whether the City can make some

J3R5barC

conference

1 accommodation for the plaintiff without going through this
2 process. If the parties really can't work it out, then I have
3 to decide the TRO and I would give the City, I assume, a brief
4 time to respond to the TRO and give the plaintiff the
5 opportunity to reply on the TRO.

6 MR. ROBERTS: Your Honor, Tom Roberts, assistant
7 corporation counsel for the defendant.

8 A couple things. I have read the TRO application
9 yesterday. Ms. Barker says that -- I don't think she's
10 presented herself to DHS and asked for homeless shelter system.
11 It seems that she should go to the shelter system and there
12 will be a placement made, recommendation, but I don't think
13 she's even done that to start with.

14 I will say it is highly, highly unlikely that she will
15 be given a single room. We have almost no single rooms in the
16 system for single adults. There are a very small handful of
17 them, they are generally given to people who are just coming
18 out of hospitals and otherwise probably -- now, DHS wouldn't
19 say this, but I think most of those folks should probably be in
20 nursing homes but they're in our system and some of them have
21 single rooms, but there are very few single rooms within the
22 system. And I think the chances of DHS, when she is assigned
23 to a shelter, her getting a single room are extremely small.

24 I will also say that DHS often places -- the
25 assignments of the rooms is not totally within DHS' control.

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1 We do control the assignment of people coming in to shelters.
2 Some of the shelters are operated by DHS employees. I don't
3 know if any of those have single rooms but there are
4 certainly -- I think a majority of the shelters for single
5 adults are run through non-profit contractors and while those
6 non-profit contractors are obligated to take the people we send
7 to them and house them, I don't believe we go to the point of
8 telling them what room to assign their clients to.

9 So, there is a series of issues there but I think the
10 reality of -- I think she should go and apply and present
11 herself to DHS and say she wants a homeless process. She is,
12 from what I saw in the papers she attached to it a letter from
13 a doctor, we have a process within DHS for evaluating requests
14 for reasonable accommodations. It would be evaluated through
15 that and I think that procedure should be followed. But, I
16 think at the end of the day I don't have a lot of hope that
17 they would in fact assign her to single room. It is not
18 impossible, but I think it is highly unlikely.

19 THE COURT: So, Ms. Barker, have you gone to DHS, the
20 Department of Homeless Services?

21 MS. BARKER: I have actually spoke to Alana who works
22 with them in respect to placement.

23 THE COURT: Have you actually gone and made the
24 application and included the doctor's letter?

25 MS. BARKER: I haven't physically went to the

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1 location. Being -- because of my medical issue I just came out
2 of a dangerous situation with, from their placement into where
3 I'm at -- where I was at a few weeks ago.

4 THE COURT: I'm sorry.

5 MS. BARKER: I was put into a dangerous situation
6 because of the DHS company and I am just coming out of that
7 right now. I have spoken with --

8 MR. ROBERTS: I'm sorry, your Honor. We are having a
9 hard time hearing Ms. Barker. If she can speak a little closer
10 to the microphone?

11 THE COURT: Right.

12 Ms. Lopez, you are not helping Ms. Barker.

13 MS. BARKER: So, they were aware of my medical
14 conditions through Alana and my lawyer, as well.

15 THE COURT: You have a lawyer?

16 (pause)

17 THE COURT: Ms. Barker?

18 MS. BARKER: Yes; his name is Carmen Giordano.

19 THE COURT: Ms. Lopez cannot answer these questions
20 for you.

21 MS. BARKER: Correct. But Alana works for the City.
22 I have also spoke to Brenda Bennett as well, who is head of the
23 mental health division for the organization as well.

24 THE COURT: Where is your lawyer? I mean is it a --

25 MS. BARKER: He is on vacation.

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1 THE COURT: And what did he do for you? Who did he
2 represent you before?

3 MS. BARKER: He sent a letter on my behalf to the DOH
4 as well as DHS.

5 THE COURT: What's his last name.

6 MS. BARKER: Giordano.

7 THE COURT: Could you spell that for us?

8 MS. BARKER: Hold on, please. G-I-O-R-D-A-N-O.

9 THE COURT: Have you contacted him in connection with
10 your application for temporary restraining order -- now, look.
11 I said that Ms. Lopez can sit with you but what you are doing
12 is you are having Ms. Lopez answer all of these questions for
13 you, even though --

14 MS. BARKER: That's not --

15 THE COURT: They're questions based upon your
16 knowledge or lack of knowledge.

17 I realize that Ms. Lopez has another case. The
18 current case is not about Ms. Lopez; it's about you,
19 Ms. Barker. So, you can't just be conveying what Ms. Lopez
20 wants you to say. I'm asking you questions about your case.

21 MS. BARKER: Right.

22 THE COURT: So.

23 MS. BARKER: Correct. I'm sorry. It's been a big
24 traumatic situation for me where she is helping me just clearly
25 put everything together, not -- they're all factual, just being

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1 clarified in conjunction to how everything went. It's been a
2 lot of very difficult few weeks at this moment, actually a full
3 year, to be honest. And so, being placed into -- back into the
4 shelter system the way that they want me to be placed into the
5 shelter system would be a bit traumatic for me.

6 So, she is just trying to clarify things for me while
7 talking to you.

8 THE COURT: Have you been in touch with your lawyer
9 about your --

10 MS. BARKER: Yes.

11 THE COURT: -- about this application?

12 MS. BARKER: Yes. About this application that I have
13 put in? No. I became homeless while he has been on vacation.

14 THE COURT: He must have a telephone number that you
15 can call him.

16 MS. BARKER: I have left a message for him but I am --
17 I am -- I filed this on Friday while being on the streets and I
18 have been on the streets for a good few -- a good week and some
19 while he has been on vacation, so he is unreachable at this
20 moment.

21 THE COURT: It's difficult for me to understand the
22 circumstances of your application. You have been, at various
23 times, represented by a lawyer. You explained to me that you
24 are now not in a shelter. You are concerned about what the DHS
25 would give you if you go to DHS and present them with your

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1 doctor's letter but I'm limited in what I could do for you when
2 you don't go to DHS and get an adverse decision from DHS on
3 your application for a single room, particularly when your
4 lawyer could make the application and explain to DHS why you
5 need a single room.

6 What was the lawyer doing for you before he went on
7 vacation?

8 MS. BARKER: He presented letters to the correct
9 people about where I should be placed in a safe environment
10 coming out of a dangerous environment.

11 THE COURT: Who did he present the letter to?

12 MS. BARKER: Mr. Roberts.

13 THE COURT: Who?

14 MR. ROBERTS: I think she is speaking of me.

15 I have not received any letter from Mr. Giordano. I
16 did talk to him about two or three weeks ago with regard to
17 Ms. Lopez, but I have not received any letters from him or any
18 communications from him concerning Ms. Barker.

19 THE COURT: One problem I am having, Ms. Barker, is
20 that you seem to be relaying what Ms. Lopez wants to say about
21 whatever case she has. Are you sure that Mr. Giordano
22 represents you and not just Ms. Lopez?

23 MS. BARKER: Oh he also represents me as well.

24 MS. LOPEZ: And, your Honor, he doesn't represent me.
25 My apologies, he does not represent me.

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1 THE COURT: Ms. Lopez, Mr. Parks, says Mr. Giordano
2 doesn't represent her. Has his correspondence with you been on
3 behalf of Mr. Lopez?

4 MS. LOPEZ: We do not have a retainer, your Honor.

5 THE COURT: Are you there, Mr. Parks?

6 MR. ROBERTS: Sorry, your Honor; it is Tom Roberts.

7 THE COURT: I'm sorry.

8 MR. ROBERTS: Not a problem.

9 I had a phone conversation with Mr. Giordano two or
10 three weeks ago in Ms. Lopez' case. Magistrate Judge Wang has
11 scheduled a settlement conference and there was an effort to
12 find counsel for Ms. Lopez and Mr. Giordano called me saying
13 that he was considering that.

14 For what it is worth recently in that case, some law
15 students in Seton Hall were assigned to represent Ms. Lopez and
16 I had not heard further from Mr. Giordano so I didn't think he
17 was going to do it. But, maybe he will do it. But I'm not --
18 Mr. Giordano has in no way communicated with me concerning
19 Ms. Barker.

20 THE COURT: Is Mr. Giordano, does he have a law firm
21 or is he by himself?

22 MS. BARKER: He has a law firm, he --

23 MR. ROBERTS: I'm at Mr. Pines' desk at the moment. I
24 exchanged e-mails with him and I could -- I'm afraid I would
25 have to walk back to my office, it would take two or three

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1 minutes to see what association, whether he is on his own. I
2 apologize, I don't remember. I didn't Google him to see
3 whether he was with a firm.

4 THE COURT: Okay. I am going to let you do that in
5 just a moment but can you tell me what the status of Ms. Lopez'
6 case is?

7 MR. ROBERTS: So, Ms. Lopez' case is before Judge
8 Caproni and with Magistrate Judge Wang handling much of the
9 preliminaries, there is a telephone call scheduled with a
10 magistrate for September 17th -- sorry, April 17th, to I
11 believe coordinate before, there is a settlement discussion
12 which will probably take place at the end of April, early May.
13 I don't think we picked a date yet.

14 For the defendants -- there are a variety of
15 defendants, DHS is a defendant, the shelter, two shelter
16 operators where Ms. Lopez was assigned are also defendants, as
17 well as a security company that was -- the contractor of one of
18 the those shelter negotiators.

19 Most of the defendants have answered, the City has
20 answered, one of the shelter operators made a motion to dismiss
21 that is pending but everybody else has answered. Discovery has
22 not yet begun. I think there is also, for what it is worth, a
23 preliminary injunction motion. Ms. Lopez made several
24 applications for TROs before Judge Caproni which were denied
25 and then there is a preliminary injunction motion which has

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1 been fully briefed and is pending before Judge Caproni and has
2 not been decided.

3 I think that's a complete statement of the status of
4 the case.

5 THE COURT: And what are the allegations that
6 Ms. Lopez makes in her case?

7 MS. LOPEZ: Your Honor?

8 MR. ROBERTS: They're quite similar to the allegations
9 that are made in Ms. Barker's case. There are probably some
10 additional ones but essentially an argument that she -- her --
11 that the ADA requires a reasonable accommodation of a single
12 room, that that's also made under various constitutional and
13 State and City Civil Human Rights Laws contentions, and then
14 there is various contentions with regard to the security,
15 essentially the security officers and some of the -- one of the
16 shelter operators called Project Renewal that they, I think
17 there is some sexual assault charges and other sort of tort
18 claims that they, while she was in residence, that she was
19 mistreated by them.

20 THE COURT: Okay. And in that case is Ms. Lopez, at
21 the moment, represented? The case was being looked at by the
22 clinic at Seton Hall to represent her?

23 MS. LOPEZ: Yes, your Honor.

24 MR. ROBERTS: I don't know if they've made a notice of
25 appearance but there was an he e-mail exchange with Magistrate

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1 Judge Wang's chambers where they were agreeing to appear for
2 the settlement negotiation. My understanding would be that it
3 was a limited appointment just for the settlement but I'm not
4 that -- I don't really know the details of that, but that's my
5 understanding of it.

6 THE COURT: Okay. Okay.

7 MR. ROBERTS: For what it is worth, in Ms. Lopez' case
8 we have the, DHS has assigned her to the Park Slope Women's
9 Armory which she has declined to go to for now over a year and
10 a half because she contends that she cannot sleep in a communal
11 area with other people and that also she requires a private
12 place for medical procedures.

13 THE COURT: Okay.

14 MR. ROBERTS: Which are quite parallel to Ms. Barker's
15 contentions.

16 THE COURT: Okay.

17 Ms. Lopez, are you being represented in your case?

18 MS. LOPEZ: First of all, I just want to say thank
19 you, your Honor, for just letting me address factual stuff.

20 THE COURT: Sure.

21 MS. LOPEZ: No, I am not.

22 I do take issue though, your Honor, without trying at
23 all to chide the Court, but as a pro se litigant I take issue
24 with, especially when the opposition is the government, the
25 Court defers somehow to the government for facts that, about my

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1 case, that I could have answered. I am quite proficient in
2 procedure and I could have answered everything Mr. Roberts
3 answered you factually, just without the tilt.

4 So, I would like to just update you and say I'm not
5 represented by the students at Seton Hall. We have an
6 agreement to meet on Friday morning to discuss this and I just
7 want to get the big pink elephant out the room or address it.

8 I am not at all attempting to somehow orchestrate a
9 complementary lawsuit from another person as strategy.

10 Ms. Barker, as I'm indicating in a letter, your Honor, that I'm
11 going to file with Magistrate Wang as soon as we leave -- and I
12 have got a copy for the Court if you would like to see --

13 Ms. Barker contacted me out of the blue because I am an
14 activist and advocate, three, four weeks ago because she was in
15 a circumstance where she was going to become homeless. I then
16 reached out to Carmen Giordano and asked him to help her.

17 Because Carmen could be helping her it became apparent that
18 maybe he should represent both of us. And she has congestive
19 heart failure so I figured she needed the lawyer to send a
20 notice to cure more than I needed a lawyer for settlement.

21 That's how Mr. Giordano got involved. Mr. Giordano sent notice
22 to cure, sent me a copy, said we will wait and see. Ms. Barker

23 went into a respite. The reason I know this, your Honor, is
24 because I ran a transgender non-profit call STAR so this is not
25 just me freelancing, we field emergencies.

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1 I assigned a staff to work with Ms. Barker to advocate
2 to DHS and the defense for an accommodation. So, this is where
3 I am going say they have been duly notified and if there is an
4 issue of fact that Mr. Roberts wants to bring up, we don't
5 know, there were no e-mails, agents of the City are fully
6 unaware, that's an issue of fact we can have at a hearing.

7 They were made aware, Mr. Giordano was aware that they
8 had received this letter. Ms. Barker went -- and not to
9 confuse you -- in a respite that is temporary, run also by the
10 City but outside of DHS. When she went in this respite, I was
11 hoping someone would call her and maybe have a bed.

12 Mr. Giordano then -- and if your Honor likes I could furnish
13 the e-mail -- without me knowing, says Mariah, by the way I'm
14 going on vacation at the end of next week. I e-mailed him and
15 say uh-oh, what happens when Ms. Barker becomes homeless while
16 you're away? Him and I missed each other in an exchange to try
17 to talk about what to do. Ms. Barker presented to me street
18 homeless last week and I did not know what to do.

19 So, your Honor, to be completely honest, I considered
20 and might still when I leave here, filing a motion under U.S.C.
21 23 in my case to potentially ask for class certification.

22 Before anyone even says you can't do that you're a pro se

23 litigant, that's not necessarily clear. What is clear I, in my
24 case, might have a lawyer as of Friday morning that could help
25 Ms. Barker.

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1 I also just, you know, just me not wanting to run in
2 here and act like a lawyer, I told the lawyers from Seton Hall
3 you guys might want to come in for Akasha tomorrow because she
4 has a hearing. It was last minute and they couldn't do that.

5 So, clearing up those facts.

6 In terms of our case, I want to be very clear to you.
7 I have been granted TROs as much as I have been denied them and
8 the parallels in our cases are abundant but there were some
9 issues unique to Akasha that I think made her situation more
10 urgent.

11 And, just in terms of Mr. Roberts not accurately
12 stating the posture of the case, your Honor, I am actually
13 technically winning. We were in discovery on February 6th --
14 I'm an activist. At a hearing, the Court stayed discovery
15 because I had been arrested and a phone taken. Magistrate Wang
16 said I'm going to stay discovery until you get your phone back
17 because you say you can't function in this case. Your Honor,
18 some of the evidence from the shelter is physically on the
19 phone so Magistrate Wang stayed discovery.

20 So, as your Honor will be aware anyway, I don't even
21 have to accept the help from the Seton Hall students, if I
22 want. I am actually filing the motion for the Judge to lift
23 the stay on discovery regardless of the Seton Hall students'
24 representation because I have the right to discovery.

25 And again just to categorize, to be fair, I'm winning

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1 against the City. I have survived motions to dismiss. The TRO
2 he is referring to is related to the fact that in December I
3 was contacted by a law enforcement entity looking to make an
4 arrest on someone who had sexually assaulted me that made me
5 being street homeless a little more dangerous. I filed a TRO
6 in front of Judge Caproni asking her to consider irreparable
7 harm or the irreparable harm I could face coming from the
8 danger of the defendant in that criminal case. So, I was
9 sexually assaulted, the DA wants to arrest the person. That's
10 the nature of that TRO so I am giving you that.

11 So, I'm not a person that filed a bunch of frivolous
12 TROs. For your information, your Honor, I met with the ADA on
13 Monday, ADA Lynda Weinman who has been waiting in that case,
14 waiting for her case to see if Judge Caproni rules on my motion
15 because -- and Mr. Roberts is on the phone, your Honor, you can
16 ask him this. The ADA in Special Victims has told Mr. Roberts
17 that if she made an arrest I would be in danger. That was all
18 the way back in December, just to contextualize my TRO. I
19 don't file frivolous TROs, there was a need for me to go into a
20 shelter system and maybe get domestic violence services that
21 DHS was unwilling to provide.

22 The last thing I want to bring up is that I also
23 didn't just leap to Ms. Barker's aid. Her name came up in the
24 context of an emergency TRO hearing last year involving WIN
25 West who has not been named as defendants but Ms. Barker could

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1 eventually name them.

2 I brought the transcript from the hearing in front of
3 Judge Caproni just to prove this wasn't us sort of huddling as
4 trans people saying, *What are we going to do?* Akasha's name
5 was brought up originally in a TRO hearing because they were
6 trying to transfer me to the facility that she has now claimed
7 was harmful to her. So, there is a transcript here just --

8 THE COURT: What happened to that TRO?

9 MS. LOPEZ: She wouldn't come and it was denied, your
10 Honor. I will admit it, but with her here sitting here there
11 was a situation where Judge Caproni said where is this other
12 person? Do you have another person saying she was abused at
13 WIN West? And I called Akasha and she said, yes, this happened
14 to me but, no, I can't help because I'm scared of retaliation.

15 And with that, I'm going to be quiet so now you may
16 see sort of the circular nature of this. I didn't expect her
17 to call me three weeks ago. I'm winning my case. I'm
18 barreling toward settlement. And, just to end that, I'm not
19 asking for a bunch of money, I'm asking for them to open more
20 shelters for trans people which is ironic. So, either way, the
21 City is resisting placing her properly now which could lead to
22 irreparable harm -- I don't have to justify failure and I was
23 granted an original TRO just like she is applying for for less
24 than she has.

25 So, Mr. Roberts is sort of trying to, I think,

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1 dissuade the Court in granting her TRO to try to paint a
2 picture as if we are frivolous litigants coming in every couple
3 of months and filing TRO. No. My original TRO was granted by
4 Judge Caproni because there was an issue of a service dog. She
5 has a bad paw, your Honor, that's why she is not here, your
6 Honor. That was two years ago, she is getting old. But, when
7 Judge Caproni allowed the dog in, I had my own room. Issues at
8 the shelter caused them to try to transfer me. I filed an
9 Article 78 to block it which was granted -- he didn't tell you
10 that -- Judge Jaffee in Supreme Court granted a TRO in 2017
11 blocking the transfer. The rest of that spring they spent
12 trying to get me transferred to the WIN facility where she was.
13 When he learned that she was there, your Honor, knowing her for
14 20 years -- her, myself, other trans people compared notes.
15 Everyone had been attacked.

16 So, that's the context of how she was brought into the
17 TRO hearing and literally I lost because she didn't show up.
18 That's probably why I lost.

19 THE COURT: Ms. Barker, Ms. Lopez says you have a
20 lawyer Mr. Giordano. Mr. Giordano is welcome to submit any
21 papers. How long is he going to be away on vacation?

22 MS. LOPEZ: I think it was two more weeks, I think he
23 said a month and it was planned in advance, so. And I think it
24 is overseas to make it worse, your Honor.

25 THE COURT: When did he say --

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1 MS. LOPEZ: Friday last it was --

2 MS. BARKER: Yes, it was Friday.

3 MS. LOPEZ: It is three more weeks, it is the Friday
4 before so he had already been on vacation a week, your Honor,
5 with us trying everything but to file a lawsuit.

6 MS. BARKER: Before I went into the respite.

7 THE COURT: Do you have the contact information for
8 Mr. Giordano.

9 MS. LOPEZ: Overseas or locally, your Honor? You mean
10 now.yes, your Honor, I could -- I mean, his office I think is
11 devoid of him itself.

12 THE COURT: What is it?

13 MS. LOPEZ: I didn't memorize it, your Honor. It is
14 in my phone. New York County. I believe his office on West or
15 East 121st Street, that I am certain, in the village of Harlem.

16 THE COURT: Mr. Parker, can you get the contact
17 information for Mr. Giordano? We will wait.

18 MR. ROBERTS: I will be back in a minute, your Honor,
19 but it will take me --it will probably be three minutes but I
20 will be back.

21 MS. LOPEZ: Your Honor, it might be possible for me to
22 go downstairs --

23 THE COURT: Please, keep your voice up.

24 MS. LOPEZ: I could potentially get the letter, the
25 notice to cure if the Court is pleased, because I think that if

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1 I looked up the e-mail that Mr. Giordano sent me, it would also
2 have the forwarded information for who in the law department
3 received that letter, which is really important if the City is
4 going to try to say they were unaware of her medical
5 conditions.

6 The federal law section that she is using to try to
7 file this TRO says that, you know, if you can't go through the
8 normal avenue as well as a lawyer sending a letter to the City
9 and then receiving it, an official account, a notice to cure --

10 THE COURT: I'm sorry. What is the letter?

11 MS. LOPEZ: The notice to cure and sort of putting
12 them on notice about her reasonable accommodations. There is
13 elective remedies here. People don't always have to fill out
14 their form and do it their way. That came up in my case as
15 well.

16 THE COURT: And that letter was sent by Mr. Giordano?

17 MS. LOPEZ: Yes; at least two weeks ago.

18 THE COURT: Sure. If you have a copy of that
19 letter --

20 MS. LOPEZ: What I mean is I would have to go past
21 security and get my phone, but this is important and
22 Ms. Barker's health, I would be willing to do so.

23 THE COURT: Okay. We will take a 10-minute break
24 while you get the letter.

25 MS. LOPEZ: Thank you, your Honor. I appreciate that.

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1 THE COURT: Okay. We will take a 10-minute break.

2 MR. ROBERTS: Okay.

3 (Recess)

4 THE COURT: Please, be seated.

5 So, Ms. Lopez, do you have that letter?

6 MS. LOPEZ: So, I do. I have to get a way to get it
7 to the official court e-mail. I wasn't able to print it, I had
8 no means to do that. I didn't know if the Court thought I was
9 going to be able to print it. I appreciate the order about the
10 phone so I have access to it and I can work with the Clerk and
11 Court to get you --

12 THE COURT: Mr. Fletcher can get it printed out, I
13 think.

14 THE DEPUTY CLERK: Waiting for the instructions as to
15 what to do.

16 THE COURT: Can you access the e-mail so that it gets
17 printed out?

18 MS. LOPEZ: Sure, and I'm going to -- may I write down
19 your e-mail first and I will just forward it?

20 THE DEPUTY CLERK: D-O-N-N-I-E underscore Fletcher,
21 F-L-E-T-C-H-E-R at nysd.uscourts.gov.

22 MS. LOPEZ: And, your Honor, just for clarity, when I
23 went downstairs to recall this document it came to my attention
24 that just for the purposes of I think this Court trying to
25 figure out when the City was informed of Ms. Akasha's needs,

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1 there is actually a preceding e-mail that was sent to
2 Mr. Roberts on Akasha's behalf by myself including, cc-ing
3 Alana Redfield. And, if it hasn't been described, Alana
4 Redfield is LGBT liaison, Alana's sole role is to help navigate
5 these situations.

6 So, I'm also going to forward the e-mail Mr. Roberts
7 got about Ms. Barker's case.

8 THE COURT: Okay.

9 MS. LOPEZ: I will send that right now.

10 MR. ROBERTS: Your Honor, I did receive an e-mail from
11 Ms. Lopez concerning Ms. Barker. I just didn't receive a
12 letter from Mr. Giordano. If you would like Mr. Giordano's
13 contact information I now have it.

14 MS. LOPEZ: I have it as well.

15 THE COURT: Okay. What is it?

16 MR. ROBERTS: So, his name is Carmen Jack Giordano.
17 He identifies himself as principal attorney, Giordano Law
18 Offices, PLLC.

19 Do you want his e-mail address?

20 THE COURT: Well, we have the printout now from his
21 letter to Ms. McAlpin.

22 MR. ROBERTS: 226 Lenox Avenue?

23 THE COURT: Right.

24 MR. ROBERTS: Okay, then you have got it.

25 THE COURT: Dear Ms. McAlpin, my office has been

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1 retained by Ms. Barker regarding the ongoing problems and
2 damages she has endured since being placed in your living
3 facility. First and foremost, your facility managers have
4 mistakenly and rather outrageously housed a biological male
5 with Ms. Barker, a transgender female. As a result, Ms. Barker
6 has been subjected to ongoing sexual harassment, threats of
7 violence, and unwanted advances. Additionally, Ms. Barker has
8 enumerated several problems including loss and destruction of
9 her personal property due to lack of security in your facility.

10 Unless these problems are addressed immediately, we
11 will consider all appropriate courses of action, including
12 litigation. Kindly contact our office to discuss further. If
13 we do not hear from you, we will proceed accordingly. Giordano
14 Law Offices, PLLC, by Carmen Jack Giordano.

15 THE COURT: Who is Ms. McAlpin?

16 MS. BARKER: The contract agency.

17 THE COURT: The contact?

18 MS. BARKER: The contracted agency.

19 THE COURT: Contracted agency?

20 MS. BARKER: Uh-huh.

21 THE COURT: What's the agency that we are talking
22 about?

23 MS. BARKER: St. Joseph's/St. Vincent's Supportive
24 Housing.

25 THE COURT: St. Joseph's/St. Vincent's.

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1 MS. BARKER: Supportive Housing; yes.

2 THE COURT: Okay.

3 And there was a prior notification to the City.

4 MS. BARKER: Yes.

5 MR. ROBERTS: Your Honor, when I received that
6 notification I contacted DHS and their response was that
7 St. Joseph's is not a DHS agency, this is not a -- as I
8 understand it, she was placed at an SRO that DHS does not run
9 so those problems are not within the control of the City. If
10 there was a private contractor who was making bad room
11 assignments, the issue should be brought up with the private
12 contractor. And I don't know whether either person did say
13 they have a contract with the City. All I understand is that
14 hoof --

15 MS. BARKER: They did.

16 MR. ROBERTS: They have -- they run SROs and that
17 Ms. Barker was at that SRO.

18 THE COURT: SRO being?

19 MR. ROBERTS: "Single room occupancy" is the way I am
20 using it. That's what I understand it to be.

21 MS. BARKER: It is a supportive housing program --

22 THE COURT: No, stop. Hold on.

23 MR. ROBERTS: It was, as I understood it, some private
24 organization non-profit that was running the housing where she
25 was located, not a DHS facility and not a DHS contractor; that

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1 this was something that I was told was arranged through WIN
2 West which is another non-profit that does housing issues.
3 They run some shelters but they also run housing.

4 I believe, now I am getting this third-hand, but I
5 believe that WIN West referred Ms. Barker to
6 St. Joseph's/St. Vincent's but that St. Joseph's/St. Vincent's
7 matter is not within the City's control.

8 THE COURT: Hold on one moment.

9 Okay. So, I have just been given the e-mail from
10 Mr. Roberts to Ms. Lopez, various other people.

11 MR. ROBERTS: I'm sorry. What e-mail did I send
12 Ms. Lopez?

13 THE COURT: Well, this is from Ms. Lopez to you dated
14 March 3, 2019. I have received the transcript. I am sending
15 this e-mail to all the defendants as a group. One of these
16 individuals is Akasha Barker. She had issues during the summer
17 of 2017. All details in Ms. Barker's case pointed to such
18 legal policy theater. Ms. Barker sought the plaintiff's help
19 as a well-known activist. She is housed in supporting housing
20 with St. Joseph's/St. Vincent's in the Bronx. She states that
21 there have been ongoing instances of violence and so she
22 complains also about the placement with a male-identified
23 individual. And then you send a copy -- you, Mr. Roberts, sent
24 a copy of the transcript of the proceeding that occurred on
25 February 6.

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1 MR. ROBERTS: Your Honor?

2 THE COURT: Yes.

3 MR. ROBERTS: I don't know that it is relevant but,
4 your Honor, when I received Ms. Lopez' e-mail, I forwarded it
5 to my contact at DHS who advised me that St. Joseph's was not
6 within their responsibility but that they had forwarded the
7 same information to the St. Joseph's people to make sure that,
8 well, for St. Joseph's people to do whatever they felt was
9 appropriate.

10 That's really all I know about it.

11 THE COURT: All right. Several things are clear to me
12 from the current situation.

13 Ms. Barker has brought her lawsuit against the City of
14 New York DHS and HRA. The lawsuit was filed on March 21st. It
15 first came to my attention yesterday. I believe it was
16 yesterday, along with the request for the TRO that had been
17 filed at the time that the lawsuit was brought. Included with
18 the paper was the doctor's letter dated March 21, which talked
19 about the medical necessity of putting Ms. Barker in a room
20 without other people. It appears that the facility that
21 Ms. Barker has been at where she has had problems was not,
22 itself, a DHS facility, or so the City alleges.

23 It would be useful. I do not have enough information
24 at the moment to grant a TRO. The facility that the plaintiff
25 has been at is not, on the representations of the defendant at

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1 this point, a DHS facility. The plaintiff hasn't provided the
2 information to DHS and including the doctor's letter and asked
3 for a single room, even though the defendant says that's
4 unlikely to be granted, at least it is something that should be
5 done.

6 The plaintiff has been raising problems over a
7 substantial period of time. In her complaint she talks about
8 situations that have been going on for years and most recently
9 a situation that has been going on for weeks. In the last she
10 talks about what has been happening in the last seven weeks.

11 A TRO is issued for, at most, 14 days with the ability
12 to continue it for another 14 days until a preliminary
13 injunction is, can be decided. So, I don't have and couldn't
14 on these papers, grant a temporary restraining order. On the
15 other hand, I remain open to that issue.

16 Mr. Giordano made it clear in his letter that he
17 represents the plaintiff in connection with these issues. What
18 I will do is to issue an order and make sure that it is
19 e-mailed to Mr. Giordano because he provides an e-mail address,
20 explaining that the plaintiff has filed a lawsuit and a request
21 for a TRO and asking that he submit papers as soon as possible
22 in support of the plaintiff's position, or make it clear that
23 he is not representing the plaintiff in connection with this
24 case.

25 I would also ask for any other papers in support or in

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1 opposition to the temporary restraining order -- the request
2 for the temporary restraining order, by this coming Monday, or
3 sooner if the plaintiff believes that she can make another
4 showing before Monday, April 1. But, in any event, I want
5 papers by the City by Monday, April 1, and I will have another
6 conference on Tuesday, April 2, at 2:30 p.m.

7 I also have a final request which is the parties have
8 told me that there were, you know, there is a settlement
9 discussion with the magistrate judge in the Lopez case. That's
10 fine, but the City should inquire of HRA whether, about the
11 availability of the possibility of a settlement of this case by
12 providing the plaintiff in some facility with a single room,
13 whether it be an HRA-run facility or a contract facility.

14 And if there is another possibility of settling the
15 case, the parties are welcome to -- well, it's difficult to,
16 for the defendant to talk to the plaintiff because the
17 plaintiff says she's represented by Mr. Giordano and the
18 defendant should only talk to the plaintiff through her counsel
19 so the defendant should reach out to Mr. Giordano,
20 independently of everything that I have said, to see if there
21 is some resolution that the plaintiff can have with HRA that
22 can resolve this case.

23 Is all of that clear? Yes?

24 MR. ROBERTS: Yes, your Honor. Just so -- it is DHS
25 rather than HRA, but yes.

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1 THE COURT: Okay.

2 MR. ROBERTS: That's a quibble.

3 THE COURT: Isn't there another City agency that deals
4 with this besides DHS? Ms. Lopez is shaking her head no.

5 MR. ROBERTS: I'm not aware of -- HRA, in general,
6 does public assistance in financial matters and doesn't, as I
7 understand it, does not deal directly with homeless in the city
8 issues, but I will ask further. I don't believe there is but I
9 will explore that.

10 THE COURT: What does APS do? Adult Protective
11 Services?

12 MS. LOPEZ: That's an option.

13 MR. PINES: Your Honor, Adult Protective Services
14 provides for adults who have been adjudicated, who lack
15 capacity.

16 THE COURT: Okay.

17 MR. PINES: But I think those are in residence, I
18 don't think they provide residence itself.

19 THE COURT: Okay. Any other suggestions from the
20 plaintiff or Ms. Lopez?

21 MS. LOPEZ: Yes, your Honor.

22 I just want to say, your Honor, that Ms. Barker and I,
23 we just want to be housed and we aren't actually trying to have
24 big fancy lawsuits in front of Article III judges and I would
25 say, also, I believe that there are some moving -- there are

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1 some changes that have occurred since my case even was filed in
2 this state that just make the City's position of we simply have
3 no single rooms just unsustainable.

4 GENDA was passed in our state and part of GENDA's
5 wording says that no entity, private or governmental, can limit
6 our expression as trans people. So, whether Ms. Barker has
7 included this expressly, I am working very hard with
8 Mr. Roberts just to try to reach a settlement and not be in
9 court but in the vein and spirit of GENDA, me and Ms. Barker
10 respectively, I think, as trans people, just ask everyone to
11 sort of bear with us as trans people. We sort of enter into
12 new territory on our rights as well. I have already explained
13 to Mr. Roberts that I believed that even though I had existing
14 federal litigation that it would be possible to fold in new
15 violations of refusal to place transgender people into that
16 lawsuit under GENDA and I am just saying that I am willing to
17 help Ms. Akasha Barker in any way as an advocate that this just
18 hits close to home.

19 So, I will do my best to ask the Seton Hall students
20 if they're interested in, you know, potentially expediting our
21 case in a way that helps Ms. Barker. So, for instance, if we
22 go in front of our judge and magistrate and a settlement stip
23 is new beds for transgender people, obviously that would
24 resolve Ms. Barker's conundrum as well.

25 But, one thing I don't think your Honor knows about

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1 me, and I have held it back, I didn't want to seem pompous, I
2 have three landmark cases under my belt as a trans litigant,
3 literally set the bar for trans rights and the first case, Joel
4 A. v. Giuliani, was a class action prohibited by Marisol
5 settled in a way that I'm trying to settle this, my case, which
6 was, okay, in '98 there was only one facility for gay kids,
7 just like now, there is only one facility for trans, and the
8 argument from ACS at the time was we do what we want with our
9 kids, they're fine. ACS would never put a gay or trans kid in
10 a non-gay or trans facility now and I have asked Mr. Roberts
11 for over a year, before Ms. Barker even approached me recently,
12 can you just help open a new facility and can we get sort of a
13 universal multi-faceted settlement. If your Honor is not
14 aware, in the Joy case most of the settlement meat was policy
15 change. We got \$15,000 as young people. The other two cases,
16 if your Honor will entertain, are where I really stretched my
17 legs as a trans litigant and that's why I am sort of relying on
18 my gut telling me, just like in those two cases which were
19 landmark, Jane Doe v. Bell, the State Court ruled that trans
20 people were protected under New York Human Rights Law as
21 disabled, and Lopez v. Mattingly, which was reversed by the
22 First Department eventually on technicality but the spirit of
23 the case was that the government needed to cover medical care
24 for trans people including surgeries and now all of Medicaid
25 pays for surgeries for trans people.

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1 So I have sort of been down this path before and I'm
2 familiar with the sort of ingredients, it looked very familiar
3 before, the City law department taking a staunch position, it
4 not really being consistent where we are as a society
5 medically.

6 So, I'm just really trying to help Ms. Barker in her
7 like day-to-day life but also, you know, do what I do as an
8 activist.

9 THE COURT: Well, the federal courts, as well as the
10 state courts, are always attentive to the rights that people
11 have, as well as to the well-being of the litigants who appear
12 before them and if a case can be settled in a way that is
13 helpful to the litigants, that's great.

14 MS. LOPEZ: Yes.

15 THE COURT: Okay. Well, I have set up a schedule and
16 I will also include, in the e-mail that I send out, the two
17 documents that were submitted today.

18 Is there anything else?

19 MS. LOPEZ: Would you like a copy of the letter I'm
20 going to file with Magistrate Judge Wang just relating to the
21 settlement and how this -- I am informing of what happened here
22 but --

23 THE COURT: No. I don't want to --

24 MS. LOPEZ: Sure.

25 THE COURT: -- get the documents from the other case,

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1 at least at the moment.

2 MS. LOPEZ: Yes, your Honor.

3 THE COURT: You're welcome to ask Magistrate Judge
4 Wang if she wants to settle this case but I doubt that she
5 would --

6 MS. LOPEZ: I'm going to file motion for class
7 certification actually, your Honor.

8 THE COURT: The magistrate judge appointed in this
9 case is Magistrate Judge Cott.

10 MS. LOPEZ: Okay.

11 THE COURT: C-O-T-T, who is a wonderful and long
12 serving Magistrate Judge. Okay?

13 MS. LOPEZ: Thank you, your Honor.

14 THE COURT: All right. Well, I will be seeing you all
15 next week and I wish you all well.

16 Again, Mr. Roberts, if you can, you should inquire
17 from -- you have all the documents or will have all the
18 documents including the doctor's letter and inquire of DHS
19 about a room for the plaintiff. Yes?

20 MR. ROBERTS: I hear you, your Honor. I will inquire.

21 THE COURT: Do more than inquire because it would
22 presumably resolve this case and I'm sure that if I thought
23 under the law I should require it, I'm sure that DHS would come
24 up with a room. Right? Right.

25 MR. ROBERTS: We tend to comply with Court orders,

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1 your Honor. Yes, sir.

2 THE COURT: Okay. Have a good day.

3 MS. LOPEZ: Thank you, your Honor.

4 MS. BARKER: Thank you.

5 MR. ROBERTS: Thank you, your Honor.

6 (Phone line disconnected)

7 THE COURT: I should ask, we are still on the record.
8 How do we send materials to Ms. Barker? I mean, I'm going to
9 be issuing an order, I'm going to be sending it to
10 Mr. Giordano, Mr. Giordano should be providing that to
11 Ms. Barker but he hasn't filed a notice of appearance in the
12 case. Is there any other phone?

13 MS. BARKER: My e-mail is attached.

14 THE COURT: I'm sorry?

15 MS. BARKER: My e-mail is good as well.

16 MS. LOPEZ: She has been getting e-mail.

17 THE COURT: Oh. Yes.

18 MS. LOPEZ: That's how we knew to come today, she got
19 an e-mail.

20 THE COURT: What?

21 MS. LOPEZ: That's how we knew to come today, she got
22 an e-mail.

23 THE COURT: So Mr. Fletcher has your e-mail?

24 MS. BARKER: Yes.

25 MS. LOPEZ: Yes.

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1 THE COURT: Okay. We will send this to your e-mail.
2 We also will order a copy of the transcript and make sure the
3 transcript is sent to both sides.

4 MS. BARKER: Great.

5 MS. LOPEZ: And if can you ask that to be forthwith
6 because I would actually use that in the request to magistrate
7 to consider settling the case.

8 THE COURT: Sure.

9 MS. LOPEZ: Thank you. I appreciate that, your Honor.
10 Have a good day, your Honor.

11 THE COURT: If the reporter can do the transcript by
12 tomorrow?

13 OFFICIAL REPORTER: Yes, your Honor.

14 THE COURT: Thank you.

15 o0o